

COMMITTEE ON BILLS ON SECOND READING

November 22, 2005

6:00 PM

Chairman Lopez called the meeting to order.

The Clerk called the roll.

Present: Aldermen Lopez, Roy, Sysyn, DeVries, O'Neil

Messrs.: Deputy Solicitor Arnold

Chairman Lopez addressed Item 3 of the agenda:

Ordinances:

“An Ordinance amending the Ordinances of the City of Manchester by adding a new Section 32.104 Department of Senior Services.”

“An Ordinance amending the Ordinances of the City of Manchester by amending Sections 32.105, 32.106, 32.107, 32.108, 32.109 and 32.110 substituting language of ‘Senior’ for ‘Elderly’.”

On motion of Alderman Roy, duly seconded by Alderman DeVries it was voted to recommend that the Ordinances ought to pass.

Chairman Lopez addressed Item 4 of the agenda:

Ordinances:

“Amending Sections 33.024, 33.025 & 33.026 (Health Assistant) of the Code of Ordinances of the City of Manchester.”

“Amending Sections 33.024, 33.025 & 33.026 (Building Automation Specialist) of the Code of Ordinances of the City of Manchester.”

Alderman O'Neil moved to recommend that the Ordinances ought to pass.

Alderman Roy duly seconded the motion.

Alderman DeVries stated I just wanted to remind everybody that these are funded either through the School District budget or reimbursed by other departments. This is not a direct impact on the City budget or at least a very, very small portion of one of the positions is funded under the City budget. I think that we have held the line consistently by not allowing...in light of the difficult winter that we could have I think we have held the line consistently by not bringing in any new positions and that is not what we are doing tonight. We are enabling the Health Department to save some money in the School District by allowing the health assistants to work with special education students and keep in-house special education students.

Chairman Lopez called for a vote. There being none opposed, the motion carried.

Chairman Lopez addressed Item 5 of the agenda:

Ordinance:

“Amending Sections 33.024, 33.025 & 33.026 (Solid Waste Compliance Officer) of the Code of Ordinances of the City of Manchester.”

On motion of Alderman Sysyn, duly seconded by Alderman Roy it was voted to table this item.

Chairman Lopez addressed Item 6 of the agenda:

Ordinance:

“Amending the Code of Ordinances of the City of Manchester by adding a new Chapter 54: Storm Water to Title V: Public Works.”

Deputy Clerk Normand noted that the Highway Department has requested that this Ordinance be tabled while they continue to review the ordinance.

On motion of Alderman Roy, duly seconded by Alderman O'Neil it was voted to table this item.

Chairman Lopez addressed Item 7 of the agenda:

Ordinance:

“Amending Chapter 70: Motor Vehicles and Traffic by deleting Sections 70.61-70.65 dealing with snow removal and amending Chapter 71: Snow Emergency Regulations of the Code of Ordinances of the City of Manchester.”

Alderman O'Neil moved to recommend that the Ordinance ought to pass.
Alderman Roy duly seconded the motion.

Alderman DeVries stated I have a quick comment for Highway and I don't know if they wish to respond back but when this was originally amended and I want to say it was maybe two years ago to change downtown parking with the on street night parking, there was some discussion when Alderman Guinta had brought that to the table we had changed it for a very small neighborhood, that that study group may come back with City-wide suggestions so that we could maybe update that. Personally, I live in a ward where there are not a whole lot of issues for overnight parking, odd/even and having to keep track is very difficult. If you have a college student coming home for the first time in six months and you are trying to decide which way the ordinance is at that particular time. I would like to see us continue to update that and make it easier for people where there is not an overnight parking issue like there is downtown. I am hoping that you will carry that suggestion through with the new administration and maybe come back with some further suggestions.

Chairman Lopez called for a vote. There being none opposed, the motion carried.

Chairman Lopez addressed Item 8 of the agenda:

Ordinance:

“Amending the Code of Ordinances of the City of Manchester by repealing Chapter 94: Noise Regulations in its entirety and inserting a new Chapter 94: Noise Regulations.”

Alderman O'Neil moved to recommend that the Ordinance ought to pass.
Alderman Sysyn duly seconded the motion.

Alderman Roy stated there is a note on Page 48 of our agenda from 8/17/2004 that basically reads “handout tabled to have Police, Solicitor, City Clerk and Eric Sawyer meet to combine current noise ordinance and draft revision.” I just want confirmation that that has happened.

Thomas Arnold, Deputy City Solicitor, stated I know that Eric Sawyer was originally proposing this. He and I did speak. I don't recall if the City Clerk was involved but by and large I believe it has. I don't think that is to say that all of the parties are recommending this particular ordinance in its present form.

Alderman O'Neil asked can he repeat what he just said.

Deputy Solicitor Arnold replied I said that I don't believe everybody is in agreement that we recommend this ordinance in its present form. If I recall and I apologize for not having looked at it earlier today but I think there is some conflict between the comprehensive ordinance and some of the present ordinances dealing with concerts.

Alderman O'Neil stated if I recall and I always stand to be corrected if I am wrong but a lot of this came out of motor vehicle issues. Why has this dragged on so long?

Chairman Lopez replied I think the reason it has dragged on for so long is because I think the notation that Alderman Roy mentioned on 8/17/04 where Eric Sawyer and Police and the City Clerk and Solicitor were supposed to meet and go over this and apparently that didn't happen.

Alderman O'Neil responded that is fine. I know Mr. Sawyer put in a lot of time on the concert portion of this but the main driving force for this was motor vehicles. It was an issue then. It is an issue today and it is going to continue to be an issue. We shouldn't hold this up over trying to solve all of the problems of this ordinance. We should get the language related to motor vehicles strengthened, taken care of and passed where the Police Department can enforce it. If we need to clean up other parts of it later that is fine but in my opinion this has been hanging around too long and it has been studied and people don't get to it and all of this other stuff. I don't know if we need to give...I don't know if this Committee itself is going to be together but there will be a Bills on Second Reading Committee. I would like to move that this get resolved for the meeting in January.

Chairman Lopez stated I am very comfortable in passing this and at the same time if there are changes that need to be done there can always be amendments. I agree with you totally that we have to get something on the books.

Deputy Clerk Normand stated I would like to add one thing to this discussion. If you recall, apparently there was a meeting that was held between the Solicitor and Eric Sawyer. The Clerk's Office was not involved with that but if you recall there was an issue that you and I had discussed regarding the Variance Board, the Noise Variance Board. That is still in here. I think that if you want to pass this tonight, Sections 94.30 through 94.42 need to be removed because these deal specifically with the Noise Variance Board and it deals with the concerts that we dealt with in another section several months ago and passed and is now an ordinance. Either that or table it.

Chairman Lopez replied that is my point. It should have been cleaned up before it got to this stage of the game. I agree with you about 94.30. If we remove 94.30 are you saying that everything else is okay?

Deputy Clerk Normand responded no. 94.30 talks about essentially what we did in another section. Forgive me but I can't remember the section number but it was just passed recently for outdoor entertainment. 94.40 in your packet specifically deals with the Noise Variance Board. I know that you had concerns with that Noise Variance Board. You will see 94.41 talks about the fees that directly conflict with what you passed several months ago. There are some issues. If 94.30 through 94.42 was omitted I don't think you will have any issues. It will still keep your motor vehicle related stuff in there.

Chairman Lopez asked on 94.40 I do agree that we have to have five new people and all of that and I thought the Administration Committee could take care of that.

Alderman O'Neil stated Matt you didn't mention 94.43 or 94.44.

Deputy Clerk Normand replied well I notice that 94.43 has, if you look, there are a lot of issues like F, G, H, I and J that all deal with motor vehicle related issues. That is why I didn't say that.

Deputy Solicitor Arnold stated this was designed as a comprehensive ordinance. Merely removing sections, I don't think, is going to solve the problem. For instance, if you look at 94.10 it sets Citywide noise limits for different districts such as residential, commercial and industrial. Merely removing the Variance Board, although it may solve the problem of establishing that Board membership, will leave intact the noise limits in 94.10 without a mechanism for varying those limits under the appropriate circumstances. I guess the point I am making is since this was designed as a comprehensive ordinance to sit here tonight and cut out certain sections of it will invariably, I think, lead to problems in the future. If you are looking for an ordinance that deals with traffic and car noise, then with the Committee's direction I would be glad to work on that and I think that would be the appropriate way to deal with that problem rather than trying to cut up what is in front of you.

Chairman Lopez asked Matt where did this come from, the Committee on Administration.

Deputy Clerk Normand answered correct.

Chairman Lopez stated maybe I would recommend that we refer this back to the Committee on Administration to clean it up properly.

Alderman O'Neil stated I just don't know how we can get a message back that it has to get cleaned up. It has been hanging around in various forms. Actually I am disappointed. Everybody knew what the intent was and why we were looking to strengthen it and I don't know why it has taken month after month after month and nothing has gotten done.

Chairman Lopez stated the answer to that apparently is that everybody just let it sit there and now it is here and we are trying to clean up some stuff going into next year. Apparently, administratively it is not properly set into stone so to speak.

Alderman Roy stated with due respect given to the Solicitor I would ask that we pass the ordinance without Sections 94.30, 94.31, 94.40, 94.41 and 94.42 leaving the rest of the ordinance intact to deal with what the intention was of what came forward, the automobiles and loud stereos, and send the rest back to the Committee on Administration for them to clean up in the next 60 days and bring back to us. At least that will give us something on the books that is enforceable that can be monitored and sets down the prohibitive conduct that I think the residents need in this City. As much as this disagrees with the City Solicitor, which I hate to do, the language of the Variance Board is not an enforcement issue but an administrative variance after the fact and if someone is found in violation hopefully by the time it comes back to this Board, the Committee on Administration will have something back in front of us on those four or five subsections.

Deputy Clerk Normand stated also what would happen just for the Committee's information, as with any licensing issue there would be an appeal to the Committee on Administration which, Alderman Lopez, we also talked about in the past. There is an outlet in the meantime if someone has a grievance for a noise-related issue to go to Administration.

Deputy Solicitor Arnold stated again this was designed as a comprehensive ordinance. I understand the Committee's concern. I note that I believe that this ordinance was sent by my cover letter back in February. It has been around for awhile. As I said, removing certain sections and leaving others in place, particularly if you look at 94.10 is going to establish comprehensive noise levels across the City without a mechanism for abating those noise levels should it be reasonable or just to do so. Although I understand Mr. Normand's comment, I don't think that the Committee on Administration on appeal can alter the terms of an ordinance. There are certainly ordinances that set-up that as an appeal but they cannot alter the terms of an ordinance. So for instance if 94.10, just one section out of this ordinance, gets passed it is going to establish noise limits in residential districts for instance at 55 decibels and for commercial districts 65 decibels that

may well be violated without a mechanism for dealing with requests for abatement.

Chairman Lopez asked are you saying in the bottom line that if you had to defend this ordinance it would be legally, not impossible, but give you a pretty hard time.

Deputy Solicitor Arnold answered it may well. Obviously it depends on the facts of any particular circumstance.

Alderman DeVries stated as everybody might remember I had additional exceptions with this ordinance. I would very much like to see us have a better tool to use to control car noise but for my ward there is an exemption in place here that I took great offense to and it was exempting noise coming from the Airport, ground noise specifically. To tell the south end of the City that we are concerned with the noise levels coming from automobiles on the street but we are not concerned about the noise coming from the Airport, which could be far greater, I find offensive and I will not be able to endorse this because of that. I would suggest sending this back. Maybe there is something that can be worked out in that interim period where those noise levels can be dealt with at the Airport in some way.

Alderman Roy stated I have a question for the Solicitor. In looking at Section 94.40, Noise Variance Board, would we solve every concern if in the last paragraph where it says "this section hereby establishes a Noise Variance Board" if we added language saying prior to its creation it would be the Committee on Administration given that the Committee on Administration has the licensing authority now?

Deputy Solicitor Arnold responded you could always establish the Committee on Administration as the Noise Variance Board if you so chose.

Alderman Roy stated that would leave Section 94.41 Application Fees and 94.42 Application Procedures all intact and it would put no pressure on the establishment of another Board but it would go ahead and get something on the books, which would be legal and enforceable if we added the mechanism of variance correct. The mechanism of one of our Committees to...

Deputy Solicitor Arnold interjected to deal with requests for a variance of noise limits if you were to substitute the Committee on Administration as the Appeal Board yes that would take care of that.

Chairman Lopez stated I would entertain a motion to that effect.

Alderman Roy moved to amend Sections 94.40 by adding language saying that prior to the creation of the Noise Variance Board, the Committee on Administration would hear requests for noise variances. Alderman O'Neil duly seconded the motion. Chairman Lopez called for a vote. There being none opposed, the motion carried.

Chairman Lopez stated just to deal with Matt's question, 94.43 where does that stand.

Deputy Clerk Normand responded well 94.43 I think should stay intact. Our issue is just the Noise Activities Permit issued here, which is different than the one you passed, which I think was Section 115.

Chairman Lopez asked but you can come in with an amendment to the Administration Committee if there are one or two of these items like E, F or whatever the case may be right.

Deputy Clerk Normand answered yes we could do that.

Chairman Lopez stated well I think we cleaned it up pretty good.

Alderman DeVries stated I didn't hear the whole response from Matt. The fees are not going to be an issue? I thought there was an issue with that.

Deputy Clerk Normand responded first of all...are we getting rid of 94.30 Noise Activity Permit.

Chairman Lopez answered no.

Deputy Clerk Normand stated so this would require...this ordinance would require the Veteran's Parade to get a \$100 Noise Activities Permit if they were going to create any noise over 60 decibels.

Alderman O'Neil asked that would include all parades.

Deputy Clerk Normand answered yes all parades. The St. Patrick's Day Parade as well.

Chairman Lopez stated well we want to amend that. The Christmas Parade is this weekend.

Deputy Clerk Normand stated I believe we already dealt with this in the section that was passed several months ago on outdoor entertainment. I don't think we want to go this route.

Alderman O'Neil asked does this mean...I noticed fireworks so any time there are fireworks.

Deputy Clerk Normand answered yes.

Alderman O'Neil moved to remove Section 94.30.

Deputy Clerk Normand stated 94.31 is the permit fee for that. I don't know if you want...94.41 is an application fee, which now would be paid - \$100 to the Committee on Administration to obtain a variance.

Alderman O'Neil asked so you want 94.42 out as well.

Deputy Clerk Normand answered 94.41 is the application fee for that variance.

Chairman Lopez asked so we are talking 94.30, 94.31 and 94.41.

Deputy Clerk Normand answered correct.

Alderman Roy asked can we just separate those. 94.30 and 94.31 in my opinion stand-alone because one is just a permit fee for 94.30. If we were to delete 94.30 because it already has...we have another ordinance that deals with that entire section and 94.30 and 94.31 go out of this ordinance because they are dealt with in another ordinance I would agree with getting rid of those but 94.41 and 94.42 are procedures that if we do establish a Noise Variance Board that I believe should stay in place so we don't have frivolent...you know the Committee on Administration could be here all the time if there is no recourse or no application fee.

Alderman O'Neil moved to remove 94.30 and 94.31. Alderman Roy duly seconded the motion. Chairman Lopez called for a vote. There being none opposed, the motion carried.

Chairman Lopez asked do we have anything else to clean up.

Alderman DeVries asked so there now are no problems with Section 94.40 or 94.41.

Deputy Clerk Normand stated I am not aware of any other process where we would charge the public \$100 to come before the Committee on Administration for a variance.

Alderman DeVries asked so in other words we can go back and clean that up after.

Alderman O'Neil stated isn't Matt saying we should get rid of it.

Deputy Clerk Normand responded yes and after the Committee on Administration hears this issue and cleans this up they can come back with a recommendation if they want to set-up a Noise Variance Board or however this pans out. For now, 94.41 should come out because right now you would be charging...you have already amended Section 94.40 to create the Committee on Administration as the body that will hear variances. If something happens between now and the time this is dealt with someone by ordinance would have to pay \$100 to come to Administration. I don't think you want to do that.

Alderman O'Neil asked so we want to get rid of 94.41 for now.

Deputy Clerk Normand answered yes.

Alderman O'Neil moved to remove Section 94.41 Application Fee. Alderman Sysyn duly seconded the motion.

Alderman Roy stated while I agree that we don't want to charge constituents to come in front of our Administration Committee, hopefully the Committee will see this and work very diligently to get the Noise Variance Board staffed and up and running. I do think there should be some mechanism to keep everyone who wants to play their stereo loud from coming in in front of the Committee on Administration. You could be talking about very lengthy meetings and a lot of people coming forward that normally wouldn't if there was an application fee.

Chairman Lopez stated I think the point is that if someone has a discrepancy and they want to go before the Committee on Administration they are going to have to pay \$100. I think it is right to take it out at this time and let's analyze it a little bit better.

Chairman Lopez called for a vote. The motion carried with Aldermen Roy being duly recorded in opposition.

Alderman O'Neil moved to recommend that the ordinance, as amended, ought to pass. Alderman Roy duly seconded the motion. Chairman Lopez called for a

vote. The motion carried with Alderman DeVries being duly recorded in opposition.

Chairman Lopez stated I believe the Airport Director, if there are problems out there, will come before the Committee to institute some sort of policy.

There being no further business, on motion of Alderman O'Neil, duly seconded by Alderman Sysyn it was voted to adjourn.

A True Record. Attest.

Clerk of Committee